STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 17, 2003
v	No. 234514 Calhoun Circuit Court
GARRY DEQUAWN JAMES, Defendant-Appellant.	LC No. 00-003391-FH

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d). Defendant was subsequently sentenced, as a second habitual offender, MCL 769.10, to serve a term of 30 to 360 months' imprisonment for possession of cocaine, and 180 days for possession of marijuana. We affirm.

Defendant first argues that the evidence was insufficient to show that he intended to deliver the cocaine. We disagree. In reviewing a challenge to the sufficiency of the evidence, this Court considers the evidence presented in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the elements of the crime charged were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Intent to deliver may be inferred from all of the facts and circumstances, including the amount of narcotics and the way in which they are packaged. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 478, mod 441 Mich 1201 (1992). Moreover, minimal circumstantial evidence is sufficient to support such intent. *Id*. Here, the arresting officer testified that, at the time of his arrest, defendant was carrying two separate baggies containing a total of eighteen individually wrapped chunks, or "twists," of crack cocaine. The officer further testified that the eighteen twists defendant carried were more than a typical user would possess, and that defendant also possessed a weapon and a pager, items generally carried by drug dealers. This evidence, when viewed in a light most favorable to the prosecution, was sufficient to support a rational trier of fact in concluding beyond a reasonable doubt that defendant intended to deliver the cocaine. Although defendant offered a contrary reason for possessing the cocaine, this Court will not interfere with the factfinder's role of determining the credibility of the witnesses. *Id*. at 514-515.

Defendant next argues that he was denied the effective assistance of counsel because his trial counsel failed to impeach the arresting officer's testimony that he had never been requested to provide a copy of a videotape of defendant's arrest allegedly taken by a camera in the officer's patrol car. Again, we disagree.

This Court's review of a defendant's unpreserved claim of ineffective assistance of counsel is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). A reversal based on ineffective assistance of counsel is justified only where a defendant affirmatively shows that his counsel's performance fell below an objective standard of reasonableness and prejudiced him to the extent that he was denied a fair trial. *People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000). Because we find no support for defendant's claim that the arresting officer lied about receiving a request to produce the videotape, we find no such prejudice. Although the lower court record indicates that the prosecutor was asked by the trial court to inquire into the existence of the videotape at issue here, the arresting officer was not present at the time this request was made and there is no indication that the request was ever communicated to the officer. Accordingly, defendant has failed to demonstrate that he was deprived of effective assistance of counsel. Given our conclusion in this regard, we similarly find no support for defendant's claim that the prosecutor neglected his duty to correct the officer's allegedly perjured testimony. See *People v Lester*, 232 Mich App 262, 277; 591 NW2d 267 (1998).

Finally, defendant argues that the prosecutor deprived him of a fair trial by intentionally eliciting inadmissible evidence. Specifically, defendant argues that the prosecutor improperly elicited the arresting officer's opinion regarding defendant's intent based on the extraneous items possessed by defendant at the time of his arrest, i.e., the weapon and pager. Defense counsel, however, did not object to admission of this testimony. Thus, in order to avoid forfeiture of this unpreserved claim of prosecutorial misconduct, defendant must demonstrate plain error that affected the outcome of the trial. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000), citing *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999). Because the challenged testimony was properly admissible under MRE 704, see *People v Ray*, 191 Mich App 706, 707-708; 479 NW2d 1 (1991), we find no such error here. Furthermore, we disagree with defendant's claim that the marijuana, weapon, and pager found on defendant qualified as "profile" evidence. See *People v Hubbard*, 209 Mich App 234, 239; 530 NW2d 130 (1995). Consequently, defendant has failed to demonstrate plain error in the admission of the officer's opinion testimony regarding the significance of defendant's possession of this property.

We affirm.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette